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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

THE PEOPLE,

Plaintiff and Respondent,

v.

LOKESH TANTUWAYA,

Defendant and Appellant.

D069912

(Super. Ct. No. SCN335891)

APPEAL from a judgment of the Superior Court of San Diego County, Harry M. Elias, Judge. Affirmed.

The Armenta Law Firm and M. Cris Armenta for Defendant and Appellant.

Kamala D. Harris, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Julie L. Garland, Assistant Attorney General, Charles C. Ragland and Alan L. Amann, Deputy Attorneys General, for Plaintiff and Respondent.

Lokesh Tantuwaya pleaded guilty to misdemeanor violations of attempting to dissuade a witness from reporting a crime and willfully causing or permitting a child to be injured or endangered. In exchange, the district attorney dismissed other felony

charges against him. Before sentencing, Tantuwaya filed a motion to withdraw his plea. The court denied the motion and sentenced him to the stipulated four-year probation term.

Tantuwaya appeals, asserting the court erred in denying his motion to withdraw his guilty plea. We conclude the trial court correctly denied his motion and thus affirm the judgment.

#### FACTUAL AND PROCEDURAL BACKGROUND

Tantuwaya was arrested after his wife reported a domestic argument in the home. Thereafter, Tantuwaya was charged with making a criminal threat (Pen. Code,<sup>1</sup> § 422), attempting to dissuade a witness from reporting a crime (§ 136.1, subd. (b)(1)), battery of a significant other (§ 243, subd. (e)(1)), cruelty to a child by inflicting injury (§ 273a, subd. (b)), and cruelty to a child by endangering health (§ 273a, subd. (b)).

On the day of his trial, Tantuwaya accepted a plea agreement, and pleaded guilty to two misdemeanor violations of attempting to dissuade a witness from reporting a crime (§ 136.1, subd. (b)(1)), and willfully causing or permitting a child to be injured or endangered (§ 273a, subd. (b)). In exchange, the district attorney dismissed the remaining charges. At his change of plea hearing, Tantuwaya acknowledged he understood his plea, and understood he was giving up his constitutional rights. His attorney concurred that Tantuwaya had read and reviewed the plea agreement with him. The judge accepted Tantuwaya's plea, and set a date for sentencing.

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<sup>1</sup> All further statutory references are to this code unless otherwise indicated.

Before sentencing, Tantuwaya filed a motion to withdraw his plea. At the hearing on his motion, Tantuwaya argued he was under pressure from his wife and children, and impaired by medication at the time he accepted his plea. Tantuwaya's wife testified that she and her husband were concerned with their children testifying in front of a jury. Tantuwaya claimed he pled guilty in response to his wife's concerns, and under the emotional distress and pressure he felt regarding the impact the trial would have on his children. He also testified his judgment had been clouded by his anti-anxiety medication at the time he accepted the plea.

After reviewing the moving papers, and considering the testimony of Tantuwaya and his wife, the trial court found insufficient grounds to grant the motion to withdraw the plea. The trial judge determined that based on his own recollection of the colloquy with Tantuwaya at the change of plea hearing, Tantuwaya did not appear to be impaired. Further, the trial judge held that in weighing all considerations, Tantuwaya acted in the best interest of his family, not under undue pressure.

## DISCUSSION

Tantuwaya appeals, asserting the court erred in denying his motion to withdraw his guilty plea because: (1) he entered the plea only under familial and professional duress; (2) he was substance impaired at the time of his plea; and (3) he unknowingly signed away his right to appeal any prejudgment orders. We reject this argument.<sup>2</sup>

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<sup>2</sup> At the motion to withdraw hearing, Tantuwaya's counsel proceeded on the first two contentions only. Because Tantuwaya explicitly abandoned his argument based on the unknowing waiver of appeal, the trial court considered only the medication and undue

## I

### LEGAL STANDARDS

A defendant may move the trial court to set aside a guilty plea for good cause at any time before the entry of judgment. (§ 1018.) "Good cause" means mistake, ignorance, fraud, duress or any other factor that overcomes the exercise of free judgment. (*People v. Cruz* (1974) 12 Cal.3d 562, 566.) The defendant has the burden to show, by clear and convincing evidence, that there is good cause for withdrawal of his or her guilty plea. (*Ibid.*; *People v. Nance* (1991) 1 Cal.App.4th 1453, 1457.) The grant or denial of such a withdrawal motion is "within the sound discretion of the trial court and must be upheld unless an abuse thereof is clearly demonstrated." (*People v. Superior Court (Giron)* (1974) 11 Cal.3d 793, 796.)

It is within the trial court's discretion to consider its own observations of the defendant in ruling on such a motion. (*People v. Fairbank* (1997) 16 Cal.4th 1223, 1254.) The court may also take into account the defendant's credibility and his interest in the outcome of the proceedings. (*Id.* at pp. 1253-1254; *People v. Hunt* (1985) 174 Cal.App.3d 95, 103.) Similarly, a trial court is not bound to accept a defendant's assertion that he or she was confused or that emotion overcame the person's free will. Such determination again depends on the court's assessment of the defendant's mental

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pressure arguments in its decision to deny the motion to withdraw. Appellants cannot assert error for which they bear responsibility and may be held to have waived the claim of error by affirmative conduct or inaction. (See *Redevelopment Agency v. City of Berkeley* (1978) 80 Cal.App.3d 158, 166.) Tantuwaya waived his right to appeal this issue. Therefore, we do not discuss this contention on appeal.

state at the time of the plea, and the credibility of the defendant's later efforts to recant previous admissions. (*People v. Huricks* (1995) 32 Cal.App.4th 1201, 1206-1208.)

The fact that after plea, but before sentence, the defendant has become apprehensive regarding the anticipated sentence or changed his or her mind, is not sufficient to compel the exercise of judicial discretion so as to permit the plea of guilty to be withdrawn. (*People v. Caruso* (1959) 174 Cal.App.2d 629, 642.)

## II

### ANALYSIS

#### A. Duress

Tantuwaya contends the trial court abused its discretion by refusing to fully consider the duress imposed upon him by his family. He asserts the trial judge's resolution of the issue exceeded the limits of judicial discretion.

Tantuwaya argues the trial court only gave nominal consideration to his claim of undue duress. At his change of plea hearing, however, the plea discussion with the trial judge was extremely thorough. Tantuwaya indicated he had not been threatened or forced by anyone to plead guilty. He also confirmed he was pleading guilty freely and voluntarily. The record reflects Tantuwaya had the opportunity to carefully consider his options with counsel. Whatever collateral consequences which may have come to light after his plea are irrelevant to this court and the trial court's determination.

A defendant's general claim that he was pressured into signing the plea is insufficient to show good cause to withdraw where "[n]othing in the record indicate[d] he was under any more or less pressure than every other defendant" in the same situation.

(See *People v. Huricks*, *supra*, 32 Cal.App.4th at p. 1208.) The trial court was well within its discretion in finding that even if pressure from Tantuwaya's family influenced his decision to plead guilty it was not sufficient to justify the withdrawal of the plea.

#### B. Impairment by Medication

Tantuwaya also contends the trial court improperly denied his motion to withdraw because he was under the influence of prescription drugs at the time of his plea. On the original guilty plea, Tantuwaya initialed box one, affirming he was sober and his judgment was not impaired. He also acknowledged his initials on the guilty plea at his change of plea hearing and affirmed orally that he had read, reviewed, and discussed each box with his attorney. In addition, Tantuwaya's assertion, without corroborating evidence, that medication impeded his exercise of free judgment was properly rejected by the trial court. (See *People v. Ravaux* (2006) 142 Cal.App.4th 914, 918 [motion to withdraw was properly denied where "[t]he sole evidence that [defendant's] judgment was affected by medication [was his] own assertions"].)

Based on the trial judge's observations of Tantuwaya at the time he entered the plea, and evaluating the testimony, he found insufficient evidence to establish the requisite fraud, duress, mistake or other factor that may have clouded Tantuwaya's judgment in accepting the plea. The record supports the trial court's conclusion.

DISPOSITION

The judgment is affirmed.

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HUFFMAN, Acting P. J.

WE CONCUR:

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NARES, J.

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AARON, J.